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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/759,371

Applicant(s)

MARSHALL ET AL.

Examiner

RICKY CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant arguments filed February 5, 2009 have been fully considered but are moot in view of the new ground(s) of rejection(s).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: (*See MPEP Ch. 2141*)

- a. Determining the scope and contents of the prior art;
- b. Ascertaining the differences between the prior art and the claims in issue;
- c. Resolving the level of ordinary skill in the pertinent art; and
- d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

3. **Claims 1-6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al., US 5,579,057 in view of Frank et al., US 5,651,107.**

Claim 1, Banker discloses:

A control processor (fig. 2b [128]) operating a control program (col. 8, lines 38-47) for commanding an on screen display processor (fig. 11 [127], col. 2, lines 3-11) which executes program codes (col. 14, lines 49-53) to overlay an interactive

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program guide over a television program (col. 4, lines 25-28, col. 12, lines 3-11, disclose on screen display(s) "overlayed" on active video). It should also be noted that interactivity of the on screen display is inherently implied in Banker through col. 2, lines 23-29. It should also be noted that the electronic program guide is presented as the on screen display in Banker).

Banker does not explicitly teach of wherein the overlay is with a perceived partial transparency such that can be at least partially perceived by a television viewer through the interactive program guide. However, in the same field endeavor, Frank teaches of wherein the overlay is with a perceived partial transparency such that can be at least partially perceived by a viewer through the interactive overlay (col.2 lines 60-67 which discloses blending the windows to achieve a desired level of transparency; col.6 lines 35-45 and col.9 lines 30-38 which discloses setting the alpha such that the window is rendered partially transparent).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Banker to incorporate wherein the overlay can be at least partially perceived such that a user can see through the interactive overlay as taught by Frank as a whole as to be able to view underlying data and processes that would normally be obscured (Frank, col. 2 lines 20-25)

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Claim 2:

The combination teaches the computer readable storage media of claim 1. The combination further teaches of wherein the instructions allow variability of a weight of the transparency relative to a display image. (Frank, col. 2 lines 60-67 which discloses varying the alpha); Banker, Col. 4, lines 16-28 disclose a range of colors can be selected to be a transparent pixel. One technique is by assigning a value of zero to the luminance component for nonzero chrominance components).

Claim 3:

The combination of Banker and Frank discloses the claimed invention as applied to claim 2 above, but not wherein the instructions allow a display of the percentage of the weight of the transparency as claimed.

However, providing a percentage as the weight of transparency as opposed to a specific color value disclosed in Banker or as a specific alpha value as disclosed in Frank is an arbitrary design preference and thus, would have been obvious to one skilled in the art.

Claim 4:

The combination of Banker and Frank teaches the computer readable storage media of claim 2. The combination further teaches of wherein the instructions

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allow a user to vary the weight of the transparency (Frank, col. 2 lines 60-67 which discloses permitting a user to set the alpha by a cursor control device).

Claim 5:

The combination of Banker and Frank discloses the claimed invention as applied to claim 2 above. The combination further teaches of wherein the instructions allow automatic setting of the weight of the transparency upon program guide activation (Frank, col. 7 lines 55-63 discloses automatically setting within a program the value as appropriate for the desired level of transparency).

The combination does not explicitly teach of wherein the automatic setting is set to the weight set at the time of most recent program guide deactivation as claimed. However, it would have been obvious and logical to expect the invention of Banker and Frank to maintain previous setting(s) for color transparency of pixels upon re-activation and the alpha blending factor of the on screen display to maintain the viewer's preferred settings for convenience such that the viewer does not have to change the settings every time.

Claim 6:

The combination of Banker and Frank discloses the claimed invention as applied to claim 2 above, The combination further teaches of wherein the instructions present the program guide so that portions of the program guide are opaque relative to the display image (Frank, col. 2 lines 60-67 which discloses a setting

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of an alpha 1 is opaque. Thus, if the entire overlay display is opaque, then it is inherent that portions are opaque as well. Moreover, since Banker discloses the ability to set a transparent color value to a pixel (see discussion in claim 1), the converse would have been obvious and reasonably expected. That is, setting a color value to make the pixel opaque. Furthermore, OFFICIAL NOTICE is taken to note that it is well known in the art to set portions and/or pixels of an overlay display to be opaque and would have been obvious to one of ordinary skill in the art to incorporate into Banker and Frank to obscure and/or make visible particular regions of an overlay display for displaying information which may be of importance such as logos or channel numbers such that are always visible to a user for convenience.

Claim 11 is rejected as applied to claims 1-3 above.

Claim 12 is rejected as applied to claims 1-2 above.

4. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al, US 5,579,057, in view of Frank et al., US 5,651,107 as applied to claim 1 above and further in view of Young et al, US 5,479,268.

Claim 7:

The combination of Banker and Frank discloses the invention as applied to claim 1 above, but not wherein the instructions present the program guide in a grid.

However, presenting program guide data in a grid is well known and used as evidenced by Young (figs. 1-7, 19, col. 6, lines 55-56). Thus, the combination of Banker, Frank, and Young as a whole would have rendered obvious presenting program guide data in a grid as claimed for the benefit of design preference and aesthetics for organizing/presenting information.

Claim 8:

The combination of Banker, Frank, and Young further teaches wherein the instructions present one dimension of the grid corresponding to television channels. (Young figs. 1-7).

Claim 9:

The combination of Banker, Frank, and Young further teaches wherein the instructions present one dimension of the grid corresponding to broadcast times. (Young figs. 1-7).

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banker et al., US 5,579,057, in view of Frank et al., US 5,579,057 as applied to claim 1 above, and further in view of Hamilton et al, US 5,579,055.

Claim 10:

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The combination of Banker and Frank discloses the invention of claim 1, but not scrolling the program guide as claimed. However, such feature is well known and used as evidenced by Hamilton (Abstract, col. 2, line 16). Thus, the combined teachings of Banker, Frank, and Hamilton as a whole would have rendered obvious the capability of scrolling EPG data for added flexibility in channel surfing.

Contacts

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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